IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8653 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ISHWARBHAI AMBALAL BARIA

Appearance:

MR HS MUNSHAW for Petitioner

MR SUNIL K SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/09/2000

ORAL JUDGEMENT

1. The petitioner, State Road Transport Corporation, challenges the award of the Labour Court, Vadodara in Reference No.88 of 1993 whereby the respondent is ordered to be reinstated with 75% backwages and stoppage of two

increments with permanent effect.

2. The learned counsel for the petitioner submitted that the respondent had been charged with absence without leave for the period from 28.3.1992 to 11.8.1992. The charge was proved at the departmental inquiry and the resultant order of dismissal was challenged and it is modified by the Labour Court in exercise of the powers under Section 11-A of the Industrial Disputes Act, 1947. However, it is submitted that the Labour Court was not justified in directing reinstatement of the respondent in view of the gross neglect on the part of the respondent towards his duty. It is further submitted that even the dates regarding absence without leave are wrongly mentioned in the impugned award. It is further submitted that, in any case, the award of 75% backwages was not justified as the respondent was practically not interested in reporting for duty.

3. The learned counsel for the respondent has not disputed the factum of absence without leave for the period from 28.3.1992 to 11.8.1992. However, it is submitted that the misconduct was not so serious as involving any dishonesty or intentional damage to the interests of the petitioner. It was, therefore, submitted that the punishment of dismissal was appropriately held to be too harsh merely for the misconduct of absence without leave for a long period.

4. Considering the facts and rival submissions, it appears that the Labour Court has exercised its jurisdiction under Section 11-A of the I.D.Act on being satisfied that the order of dismissal was not justified and directed reinstatement of the respondent with punishment of stoppage of two increments with permanent effect. No exception could be made to such exercise of power and discretion under Section 11-A of the I.D.Act. However, in case of prolonged absence without leave and the same having not been explained or justified, the award of backwages to the extent of 75% clearly puts a premium on remaining absent. The respondent workman cannot expect to be reinstated as well as paid any part of the wages when his service had to be terminated on account of his not reporting for duty. In the particular facts of this case, the respondent has completely failed to justify his absence without leave by any good reasons. Therefore, the impugned award is required to be modified to the extent that the respondent should not be entitled to any backwages.

5. In view of the facts and circumstances as above,

the petition is partly allowed and the impugned award is modified to the extent that the respondent shall be reinstated in his original post with continuity of service without backwages and shall suffer a further punishment of stoppage of two increments with permanent effect. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

KMG Thilake

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